



Report to the Auburn City Council

Action Item

4

Agenda Item No.

City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works *BS*
Date: March 28, 2011
Subject: Assignment of Solar Power Purchase Agreement and Site Access and License Agreement from Auburn Solar, LLC to Auburn Renewables, LLC.

The Issue

Shall the City Council consent to the assignment and assumption of the Solar Power Purchase Agreement and Site Access and License Agreement from Auburn Solar, LLC to Auburn Renewables, LLC?

Conclusion and Recommendation

Staff recommends that the City Council, BY RESOLUTION, authorize the Director of Public Works to approve the assignment and assumption of the Solar Power Purchase Agreement and Site Access and License Agreement from Auburn Solar, LLC to Auburn Renewables, LLC.

Background

On March 22, 2010 the City Council approved the Solar Power Purchase Agreement and Site Access and License Agreement with Auburn Solar, LLC for the Solar Photovoltaic Project at the Wastewater Treatment Plant. Auburn Solar, LLC. operated by Pacific Power Renewables, LLC for financing purposes has requested the City's consent to assign the agreements to Auburn Renewables, LLC.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

Fiscal Impact

There is no fiscal impact from the assignment of the agreements.

Attachments: Assignment Agreement
Wells Fargo Landlord's/Owner's Subordination
Resolution

ASSIGNMENT

This ASSIGNMENT, dated as of July 15, 2010 (this "Assignment"), is by and between AUBURN SOLAR, LLC, a Delaware limited liability company ("Assignor"), and AUBURN RENEWABLES, LLC, a California limited liability company ("Assignee").

RECITALS

WHEREAS, Assignor owns all of the interests in All right, title and interest to and in the Solar Power Purchase Agreement between Auburn Solar LLC and the City of Auburn dated as of March 23, 2010 ("**Auburn PPA**"), and the Site Access and License Agreement between Auburn Solar LLC and the City of Auburn dated as of March 23, 2010 ("**Auburn Site Access Agreement**").

WHEREAS, the owners of Assignor and Assignee have determined that Assignee will develop the 603 Kw solar photovoltaic project to be located at the City of Auburn Wastewater Treatment Plant in Auburn, California (the "**Auburn Project**") and that, in order to develop the Auburn Project, the Assignee will need to take over the Auburn PPA and the auburn Site Access Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements and other good and valuable consideration; the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree as follows:

AGREEMENT

1. Assignment. Assignor hereby transfers to Assignee, and Assignee hereby purchases and acquires from Assignor, all of Assignor's right, title and interest in, to and under the Auburn PPA and the Auburn Site Access Agreement, free and clear of any liens, security interests and encumbrances.

2. Further Assurances. At any time, or from time to time after the date hereof, Assignor and Assignee shall, at any of the other's reasonable request, and at the requesting party's expense, execute and deliver such instruments of transfer, conveyance, assignment and assumption, in addition to this Assignment, and take such other action as either of them may reasonably request in order to evidence the transfer effected hereby.

3. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this instrument as of the date first above written.

AUBURN SOLAR, LLC,
a Delaware limited liability company, as Assignor

By: _____
Name: David W. Dwelle
Title: Manager

AUBURN RENEWABLES, LLC,
a California limited liability company, as Assignee

By: _____
Name: Alan Breese
Title: Authorized Signatory

Pursuant to the provisions of section 14.1. (b) the Auburn PPA, the foregoing assignment is hereby acknowledged and agreed to:

CITY OF AUBURN

By: _____

Agreed to as to Form:

Michael G. Colantuono, City Attorney



Wells Fargo Equipment Finance, Inc.
733 Marquette Avenue, Suite 700
MAC N9306-070
Minneapolis, MN 55402

Landlord's/Owner's Subordination

Contract Number 0334472-700 dated as of December 30, 2010

WHEREAS the undersigned is the owner or landlord of the following described real estate (the "Premises"):

10725 Ophir Road, Auburn, CA 95603

WHEREAS the following described equipment (the "Equipment") is or will be installed on or affixed to the Premises:

The Equipment described on Schedule A attached hereto and made a part hereof.

WHEREAS, the undersigned claims a lien or other interest in or has leased or otherwise granted the right to occupy to Auburn Renewables, LLC (the "Customer"), all or a portion of the Premises; and

WHEREAS Wells Fargo Equipment Finance, Inc., ("Creditor") has leased or will lease or advance money for purchase of the Equipment to, or has obtained or will obtain a security interest in the Equipment from the Customer.

NOW THEREFORE the undersigned hereby agrees as follows:

1. The interest of Creditor in the Equipment shall at all times be superior to any interest the undersigned may now or hereafter have in the Equipment and the undersigned hereby subordinates any lien it may have in the Equipment, whether such lien is statutory or by agreement, to the lien of Creditor whether or not the Equipment is deemed a fixture to the Premises, and the undersigned agrees that the Equipment is and shall at all times remain personal property notwithstanding that it may be installed on or affixed to the Premises.
2. Creditor may inspect the Equipment on the Premises and may remove the Equipment from the Premises without further consent of the undersigned. Creditor shall pay for the cost of repairing any physical injury to the Premises caused by removal of the Equipment but not for any diminution in value of the Premises caused by absence of the removed Equipment or by any necessity of replacing the removed Equipment.
3. The Equipment may remain on the Premises free of charge for a period of 30 days following written notice from the undersigned to Creditor directing removal.
4. Creditor may extend the time for payment or change in any other way the obligations of the Customer to Creditor without affecting the agreements of the undersigned hereunder.
5. This agreement shall be binding upon and inure to the benefit of the estate, heirs, successors and assigns of the undersigned and the successors and assigns of Creditor. This agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document and all signatures need not appear on the same page.

Dated as of: December 30, 2010

See attached page for signatures.

Ver. 0309

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MORTWAIV: A435432 (mts)UATBADFOOTER

Landlord/Owner:

City of Auburn

By: _____

Title: _____

Attest:

By: _____

Title: _____

Approved as to form:

By: _____

Title: _____

Customer Acknowledgment and Consent

Auburn Renewables, LLC

By: _____

David W. Dwelle
Manager

RESOLUTION NO. 11-

RESOLUTION AUTHORIZING THE ASSIGNMENT OF THE SOLAR POWER
PURCHASE AGREEMENT AND SITE ACCESS AND LICENSE AGREEMENT FROM
AUBURN SOLAR, LLC TO AUBURN RENEWABLES, LLC.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the
Director of Public Works to approve the assignment and assumption of the
Solar Power Purchase Agreement and Site Access and License Agreement from
Auburn Solar, LLC to Auburn Renewables, LLC.

A true and correct copy of said Agreement is attached hereto as Exhibit "A."

DATED: March 28, 2011

William W. Kirby, M.D., Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular session meeting of
the City Council of the City of Auburn held on the 28th day of March 2011 by
the following vote on roll call:

Ayes:

Noes:

Absent:

Joseph G. R. Labrie, City Clerk